

Digvijay Singh Vs. Tehsildar Tehsil Nagina, District, Bijnor and Others

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Court : Allahabad

Decided On : Aug-05-1994

Reported in : AIR1995All96

Judge : Ravi S. Dhawan and ;G.S.N. Tripathi, JJ.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Co-operative Societies Act, 1966 - Sections 29; Uttar Pradesh Goondas Act, 1970

Appeal No. : Civil Misc. Writ petition No. 24867 of 1994

Appellant : Digvijay Singh

Respondent : Tehsildar Tehsil Nagina, District, Bijnor and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Mr. Devendra Pratap, Adv.

Judgement :

ORDER

RAVI S. DHAVAN, J.

1. The petitioner, Digvijai Singh alias Diggi, in reference to the elections of the co-operative societies which are in progress, filed his papers from the constituency of Asadullahpur Prithi on 2 May, 1994. On the nomination papers which he had filed,

the petitioner faces objections from others on two grounds, firstly, that the petitioner had been debarred from contesting any elections by an order of the Collector and secondly, he has been convicted under the U.P. Goondas Act, 1970.

2. On each of the aspects referred to above, the petitioner submits, he had filed writ petitions. Against the first aspect, it is writ petition No. 9314 of 1993; Digvijai Singh alias Diggi v. Commissioner, Moradabad Division, Moradabad and others. Against the second, it is writ petition No. 9509 of 1992; Digvijai Singh v. District Magistrate/ Registrar, Cane Co-operative Societies and others. In Writ Petition No. 9509 of 1992, the order by the petitioner had been debarred from contesting elections for three years was initially suspended, but subsequently recalled and vacated. In the second writ petition, the internment of the petitioner under U. P. Goondas Act, 1970 by the order of the Commissioner in appeal, had been stayed by the High Court.

3. The Election Officer by his order of 5-5-1994 Annexure-2 to the writ petition has rejected the nomination of the petitioner. Consequently, the petitioner now cannot stand for election as a delegate to a cooperative society.

4. This order aggrieves the petitioner, and has been challenged by this writ petition. The contention is firstly, that at worst he had been debarred from holding a post, and to be a delegate does not amount to holding a post; the order of the Election Officer cannot restrain him from seeking an election or filing his nomination as he is not contesting an election to an office. The second submission is that the order of the Commissioner by which he had been convicted (by the Collector/ District Magistrate) under the U. P. Goondas Act, 1970, having been stayed by the High Court, there is no bar on him to seek an election.

5. The Court has heard learned Counsel for the petitioner and perused the record of this petition as also the records of the other two writ petitions. The Court is not inclined to interfere in the course of election by this writ petition. Firstly nominations having been filed and processed without illegality, and the election schedule having been commenced and the polling set for 14 August, 1994, the conduct of the election cannot be stalled by this Court.

6. Secondly, the Court is not impressed by the submission that the petitioner seeking an election as a delegate to a co-operative society, is not an election to a post. This argument is merely to sidetrack the restraint in the order of the Election Officer, in rejecting the nomination of the petitioner. The post will come later. The restraint on the petitioner is that he has been debarred from seeking an election. Thus, the petitioner will be kept out of the arena of elections no matter what the post may be.

7. The third submission is misconceived, and a misunderstanding of the law. The petitioner was convicted under the U. P. Goondas Act, 1970. This order of conviction of the court below or for that matter the confirmation of it in appeal or revision, notwithstanding that it was stayed by the High Court will not aid the petitioner to stand for election. All that has happened is that the order under challenge, i.e., the conviction, has been stayed; the existence of the order under challenge has not been wiped out, AIR 1992 SC 1439 : 1992 AIR SCW 1517 (M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assocn., Madras). In the facts and circumstances of present case, though a stay order, obtained by the petitioner in another petition, may have stayed his internment or externment as a goonda but the order of conviction, unless quashed, stands.

8. In these circumstances, the Court is not inclined to exercise its discretion to interfere by the issue of a writ on this petition, as this is not a fit case in which a prerogative writ ought to issue. In so far as the other petitions are concerned, we express nothing on merits and the petitioner, if he so desires, may submit on those petitions on merits.

9. This writ petition is misconceived, not maintainable and accordingly dismissed.

10. Petition dismissed.